

MEMORANDUM

TO: **Real Estate & Transportation Committee**
 Commissioner Bill Read, Chairman
 Commissioner Justin Troller
 Commissioner Phillip Walker

FROM: City Attorney's Office

DATE: December 2, 2019

RE: **Purchase and Development Agreement with Summit Real Estate Holdings, LLC for City-Owned Property at 117 N. Massachusetts Avenue**

Attached for your consideration is a proposed Purchase and Development Agreement and associated Parking Lease Agreement between the City of Lakeland and Summit Real Estate Holdings, LLC (Summit) for the sale of approximately 1.29 acres of City-owned property located at the southeastern corner of the intersection of North Massachusetts Avenue and Cedar Street/E. Main Street, commonly known as the "Old Fire Station Lot" adjacent to the northwestern shore of Lake Mirror.

Summit proposes to construct a nine-story, 135,000 square foot class "A" office building with parking accommodations for approximately 450 parking spaces. The parking garage will be integrated into the office building utilizing the first four floors of the structure. The office building will be entirely owner-occupied and utilized by approximately 500 Summit employees. The investment by Summit in the project is estimated at \$50 million, and encompasses the office building, integrated parking, site work and necessary utility relocations. The median income of the employee base will exceed 115% of the area median income. The proposed site development layout is attached for reference. Key negotiated terms of the Agreement include the following:

- The purchase price to be paid by Summit for the property is \$2.5 million, with a \$100,000 earnest money deposit made within five (5) business days of Agreement execution.
- Summit will have an initial 90-day inspection period, with the right to extend the inspection period by two 30-day periods. Summit may terminate the Agreement within the inspection period or any extension thereof if, in its sole discretion, it determines that the property is not suitable for its intended development.
- Upon completion of construction of the office building and associated parking garage, the City will contribute the \$2.5 million received through the sale of the property to Summit as its contribution to the establishment of the necessary onsite parking. This is in lieu of City construction of a garage facility. In exchange for its contribution, the

City will be entitled to the non-exclusive use of a minimum of 150 parking spaces on weeknights (after 6 p.m.) and weekends throughout the 30-year term of the Parking Lease Agreement.

- The parking lease will commence upon the date construction is completed on the office building and integrated garage. The 30-year lease term will provide the City with access to no less than 150 non-exclusive parking spaces from 6:00 p.m. to 3:00 a.m. on Mondays through Fridays and 6:00 a.m. to 3:00 a.m. on Saturdays and Sundays for use by the public. Should the City choose to charge for the parking spaces allotted for the general public, Summit employees will be exempt from charge.
- Summit may terminate the parking lease for convenience after the first three (3) years of the lease agreement upon providing 150-days advance notice and payment to the City of one hundred and ten percent (110%) of the pro-rata balance of the Public Parking Consideration (\$2.5 million), based upon how many months are remaining in the lease term. Summit may also terminate the lease, subject to the same pro-rata payment to the City, if Summit determines that use of the parking garage by the public is creating an unsafe or hazardous condition.
- The City will establish a \$1.0 Million site development contribution, less water and wastewater impact fees, estimated at \$64,338.30 in the Agreement. Summit will be responsible for the payment of additional water and wastewater impact fees if it is determined at certificate of occupancy that actual impact fees exceed the Agreement estimate. The City's net site contribution will be distributed to Summit beginning at closing and at 90-day periods thereafter so that the entire City contribution will be paid out 270 days from closing. Funding for the contribution will be made from Utility and Community Redevelopment Agency (CRA) accounts and Catalyst funding options.
- In lieu of a City contribution to the long term maintenance and operation costs of the parking garage over the 30-year parking lease term, estimated at a minimum of \$50,000 per year, as had previously been part of the negotiations, the Agreement provides for the City to instead offset the permit fees, survey costs, documentary stamp taxes and title insurance premium associated with the sale and development of the property.
- No tax increment financing is being provided, nor will be considered in the future for the development. The annual property tax revenue to be generated by the property is estimated conservatively at \$200,000 to \$250,000 upon completion of the project.
- The project is estimated to be completed within 18 months of the commencement of construction. The 90-day inspection period will commence upon execution of the Agreement, during which time Summit will seek all necessary approvals, permits and design review. The parties will also review and finalize the legal description for the

property during the inspection period, ensuring adequate property for construction of the proposed Highline.

- The Agreement will expire one (1) year from the effective date if Summit has failed to close on the sale. In addition, the City has the right to repurchase the property if Summit fails to commence with construction of the office building within two years of the date of closing. The repurchase price to be paid by the City would be the same as the purchase price paid by Summit.

Lakeland's central city continues to be invigorated with significant projects such as Mirrorton, the Heritage Garage and Business Office, the new Catapult building, the Joinery, and the new RP Funding Center hotel. Summit's new anchor office development should be considered not only a continuation of, but an enhancement to, the catalyst effort within the downtown corridor. It is recommended that the City Commission approve the attached Purchase and Development Agreement with Summit Real Estate Holdings, LLC and authorize the Mayor and other appropriate City officials to execute the Agreement and all other instruments necessary to close the transaction in accordance with the terms of the Agreement.

attachments

PURCHASE AND DEVELOPMENT AGREEMENT

This Purchase and Development Agreement (“**Agreement**”) is made by and between Summit Real Estate Holdings, LLC, a Florida limited liability company, whose address is 2310 Commerce Point Drive, Lakeland, Florida 33801 (“**Purchaser**”), and the City of Lakeland, a municipal corporation of the State of Florida, whose address is 228 South Massachusetts Avenue, Lakeland, Florida 33801 (“**Seller**” or “**City**”).

In consideration of the mutual covenants, promises and provisions herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Purchaser agree as follows:

DESCRIPTION OF PROPERTY

1.1 **Purchase and Sale of Property.** Seller hereby agrees to sell, assign, and convey to Purchaser, and Purchaser agrees to purchase from Seller, the portion of those certain parcels of real property located east of North Massachusetts Avenue and south of East Main Street in Lakeland, Polk County, Florida, depicted in the attached Exhibit “A,” attached hereto and incorporated by reference, that includes a portion of the former right-of-way for East Main Street (“**Vacated Right-of-Way**”) but excludes a portion of the eastern boundary of such parcels as generally reflected on Exhibit “A” and reasonably determined by Purchaser, but in no event less than sixteen feet (16’) in width, to allow the City to develop a multi-use pathway and public space (commonly referred to as the “**Highline**”)(collectively, the “**Land**”), together with all improvements thereon, and all appurtenances pertaining thereto including, without limitation, all development rights allocable to the Land, and all rights, title and interest of Seller in and to any easements, adjacent streets, roads, or rights of way pertaining to the Land (hereinafter collectively referred to, along with the Land, as the “**Property**”). For purposes of this Agreement, Purchaser’s intended use of the Property is for an approximately 135,000 square foot Class “A” office building, of approximately nine (9) stories in height with approximately four hundred fifty (450) parking spaces (“**Parking Spaces**”) within a parking structure (collectively, the “**Office Building**” or “**Purchaser’s Intended Use**”). The Highline property will be retained by Seller to develop, at Seller’s expense and discretion, a multi-use pedestrian pathway consistent with the City of Lakeland catalyst vision plan. The final legal description and acreage for the Land for purposes of this Agreement shall be determined by the Survey (defined below).

1.2 **Highline.** The area for the Highline (“**Highline Property**”) is not a part of the Property. Seller shall be responsible for the Highline and all costs related thereto. Seller shall provide the Highline concept design plans to Purchaser for review and approval before finalizing such plans. Purchaser’s approval of the Highline design plans may not be unreasonably withheld, conditioned or delayed, but the plans may not unreasonably interfere with the function or use of the Office Building. The rights and obligations set forth in this provision shall survive the Closing.

1.3 **Construction and Landscaping Easement.** Seller shall grant to Purchaser a temporary construction and landscaping, and permanent utility and drainage easement (“**SREH Easement**”) under, over and across the Highline Property. The temporary construction easement will terminate at such time that Purchaser receives a certificate of occupancy for the Office Building. The landscaping easement shall terminate if and at such time that the Seller constructs the Highline within the Highline Property. The utility and drainage easements shall be perpetual.

1.4 **Footer Easement.** Seller shall grant to Purchaser a perpetual easement (“**SREH Footer Easement**”) to allow building footers to exist under and across the Highline Property. The Purchaser shall propose an easement document for the SREH Footer Easement during the Inspection Period, which shall be subject to the mutual written agreement of the parties.

1.5 Additional Easements. During the Inspection Period, the Purchaser shall propose and the parties will negotiate an easement agreement (“**Easement Agreement**”) which shall include the SREH Easement, the SREH Footer Easement and other easements in favor of the Purchaser or Seller that are reasonably necessary for the development of the Purchaser’s Intended Use.

PURCHASE PRICE

2.1 Purchase Price. The total purchase price for the Property which Purchaser agrees to pay to Seller shall be Two Million Five Hundred Thousand and No/100 Dollars (\$2,500,000.00)(“**Purchase Price**”).

2.2 Payment of Purchase Price. Pursuant to the terms of this Agreement, Purchaser shall pay to Seller the Purchase Price as follows:

Earnest Money	\$100,000.00
Balance of Purchase Price at Closing	\$2,400,000.00
Total Purchase Price:	\$2,500,000.00

EARNEST MONEY

3.1 Amount: Terms. Purchaser shall, within five (5) business days after the Effective Date of this Agreement, deliver to Clark, Campbell, Lancaster & Munson, P.A., whose address is 500 South Florida Avenue, Suite 800, Lakeland, Florida 33801 (the “**Escrow Agent**”), the sum of One Hundred Thousand and No/100 Dollars (\$100,000.00)(“**Earnest Money**”).

If Purchaser terminates this Agreement in accordance with any right to terminate granted herein, or if Seller is unable or unwilling to perform an obligation required by this Agreement within the time periods provided herein, the Earnest Money shall be returned to Purchaser, and Purchaser shall have no further obligation to close hereunder. All Earnest Money shall be applied to the Purchase Price at Closing if the parties close the transaction pursuant to this Agreement.

INSPECTION PERIOD

4.1 Duration. Purchaser shall have the right, subject to the terms herein, for a period of ninety (90) days commencing on the Effective Date of this Agreement and ending at 5:00 P.M. on the last day of such period (the “**Inspection Period**”) to enter upon, inspect and investigate the Property to determine whether or not the same is satisfactory to Purchaser in Purchaser’s sole and absolute discretion. Purchaser shall, in its sole discretion, have the right to extend the Inspection Period by up to two additional thirty (30) day periods (the “**First Extended Inspection Period**” and “**Second Extended Inspection Period**,” respectively, and each an “**Extended Inspection Period**”) by providing written notice to Seller at least ten (10) days prior to the expiration of the applicable Inspection Period or First Extended Inspection Period. When exercised, an Extended Inspection Period shall become a part of the Inspection Period for purposes of this Agreement.

4.2 Entry and Inspection. During the Inspection Period, Seller shall make the Property and all documents, permits, books, and records pertaining to the Property in Sellers possession, available for inspection by Purchaser. During the Inspection Period, Purchaser may, at Purchaser’s sole risk and expense, undertake, or cause to be undertaken on behalf of Purchaser, a complete physical inspection, review and

examination of the Property as Purchaser deems appropriate, including but not limited to soil/groundwater tests and environmental assessments and audits (collectively, the “**Property Inspections**”), provided, however, that any Property Inspections do not cause any permanent damage to the Property. All such Property Inspections shall be undertaken at Purchaser’s sole cost and expense. Purchaser will coordinate all on-site inspections with a representative of Seller (to be identified and, if necessary, updated by Seller upon written notice to Purchaser) and Seller agrees to reasonably cooperate with Purchaser, including without limitation making Seller and any of Seller’s representatives that are familiar with the Property and its present and past uses available for interview by Purchaser or Purchaser’s agent. The Purchaser shall, upon completion of Purchaser’s Inspection Period, return the Property to its existing condition, restore and repair any damage caused by any Property Inspections, and shall indemnify, defend and hold the Seller harmless from any damages that result from Purchaser’s Property Inspections, all of which obligations shall survive the termination of this Agreement. During the Inspection Period:

- (a) Seller shall, at Seller’s sole cost and expense, provide the Survey as defined below;
- (b) Seller and Purchaser shall agree to the final form of agreements, if necessary, including, without limitation, the Easement Agreement, that are critical to the development of the Office Building that are to be executed at or before Closing;
- (c) Seller and Purchaser shall execute a lease, to be held in escrow pending Closing, whereby Purchaser leases to the City at least one hundred and fifty (150) non-exclusive parking spaces (“**Non-Exclusive Parking Spaces**”) for a period of thirty (30) years (“**City Parking Lease Agreement Term**”) in the form set forth in Exhibit “B,” attached hereto and incorporated herein by reference (the “**Parking Lease Agreement**”), providing that the City may use the Non-Exclusive Parking Spaces for non-exclusive use during non-business hours Monday through Friday and all day on Saturday and Sunday (“**Public Parking Allowance**”) and shall pay the Public Parking Consideration (as defined in the Parking Lease Agreement) to the Purchaser within thirty (30) days after Purchaser provides Seller with a certificate of occupancy for the Office Building (the rights and obligations set forth in this subparagraph shall survive the Closing);
- (d) Purchaser shall seek the appropriate approval of its plans from the Lakeland Downtown Development Authority (“**LDDA**”) pursuant to the rules and regulations of the LDDA; and
- (e) Seller shall be allowed to review and approve the exterior architectural designs for the Office Building (the “**Building Plans**”), which approval may not be unreasonably withheld, conditioned or delayed and in no event shall be provided more than thirty (30) days after receipt of the Plans (the “**Building Plan Review Requirement**”).

4.3 Termination of Inspection Period. The Purchaser or Purchaser’s agent shall have the right at any time during the Inspection Period to notify Seller and Escrow Agent in writing that it has elected to terminate this Agreement if Purchaser for any or no reason determines that the Property is not satisfactory to Purchaser. Upon receipt of said written notice, the Escrow Agent shall return the Earnest Money to Purchaser and neither party shall have any further obligation pursuant to this Agreement except as specifically stated to survive a termination of this Agreement. If Purchaser does not terminate the Agreement prior to the expiration of the Inspection Period, Purchaser shall be deemed to have waived its right to terminate this Agreement pursuant to this paragraph.

GENERAL REQUIREMENTS OF SELLER

5.1 Approval of Purchaser’s Intended Use. Except as specifically addressed in this Agreement, Purchaser’s Intended Use of the Property has been approved by Seller.

5.2 Seller Contribution. Seller shall contribute, in the manner provided in this Agreement, an amount equal to One Million and No/100 Dollars (\$1,000,000.00)(“**Maximum Seller Contribution**”) less the City Site Improvement Cost Amount (defined below) to Purchaser for the Office Building project (the “**Net Seller Contribution**”) in consideration for Purchaser’s assumption of the obligation to complete all on-site infrastructure improvements related to Purchaser’s Intended Use of the Property, including, without limitation, the relocation of the potable water line on the Property (the “**Site Infrastructure Improvements**”). At Closing, the Escrow Agent shall distribute twenty-five percent (25%) of the Net Seller Contribution from the Seller’s net proceeds to Purchaser. The Seller shall pay to Purchaser an additional twenty-five (25%) of the Net Seller Contribution on or before each ninety (90) day period following the Closing (so that the entire Net Seller Contribution will be paid to Purchaser on or before two hundred and seventy (270) days following Closing). Unless there is an event of force majeure (defined for purposes of this Agreement to be any cause or causes not reasonably within the control of Purchaser, including, without limitation, acts of God, strikes, lockouts, acts of a public enemy, acts of terrorism, sabotage, wars, blockades, military action, insurrections or riots, epidemics, earthquakes, fires, storms or storm warning, hurricanes, floods, civil disturbances, explosions, inability to obtain, after the exercise of due diligence, necessary materials, supplies, or labor, or other similar event beyond the reasonable control of Purchaser), should Purchaser fail to complete the Site Infrastructure Improvements within eighteen (18) months from the Closing Date, Purchaser shall reimburse Seller for the amounts of the Net Seller Contribution that has been paid by Seller to Purchaser. This provision shall survive Closing and shall remain binding upon Seller and Purchaser.

5.3 City Site Improvement Costs. Seller shall be entitled to \$64,338.30 (\$22,771.50 for water and \$41,566.80 for wastewater, collectively, the “**City Site Improvement Cost Amount**”), to offset any and all water and wastewater impact fees that may otherwise be due for the Office Building, as a setoff against the Maximum Seller Contribution to calculate the Net Seller Contribution as set forth in Paragraph 5.2 above. No costs that Seller incurs other than the City Site Improvement Cost Amount shall be credited against the Maximum Seller Contribution or impact the calculation of the Net Seller Contribution. In the event the actual water and wastewater impact fees due for the Office Building, as calculated upon the issuance of the certificate of occupancy for the Office Building, exceeds the City Site Improvement Cost Amount as defined above, Purchaser shall promptly pay such additional impact fees to the City.

5.4 No Impact Fees Due. With the sole exception of the City Site Improvement Cost Amount, as specifically defined in Paragraph 5.3 above, or any additional water and wastewater impact fees due upon issuance of the certificate of occupancy for the Office Building, as further provided in Paragraph 5.3 above, Seller hereby waives, and the Purchaser shall not be required to pay, any impact, building, utility, permit or other fees or charges associated with the development and construction of Purchaser’s Intended Use of the Property.

5.5 Off-Site Public Works Improvements. Purchaser shall not be responsible for any off-site public work improvements, provided that Purchaser shall repair any off-site public work improvements that are damaged as a result of the construction of the Office Building by Purchaser.

5.6 Land Use and Zoning Approvals. The Seller shall confirm, in writing, that the appropriate land use, zoning and transportation approvals are in place for the Office Building and related improvements,

including, without limitation, the appropriate height allowances, if necessary, during the Inspection Period, at Seller's expense. In the event that the necessary land use and zoning approvals are not presently in place to allow Purchaser's Intended Use of the Property, the Seller will process a City initiated request, at the Seller's expense, to achieve such land use and zoning approvals to allow Purchaser's Intended Use of the Property.

The Purchaser shall cooperate with Seller and provide Seller, at Purchaser's expense, with the information, including, but not limited to, a zoning site plan, building plans and architectural renderings, a landscaping plan, and other information or documents that may be reasonably requested by Seller, necessary to file and process the land use and zoning applications for the Property. The Purchaser shall design the Office Building in accordance with the City of Lakeland Land Development Code, engineering manual and other applicable State of Florida rules, statutes and regulations, provided that Seller shall process the necessary building height waiver to allow the Office Building to be built as designed and that the parties shall cooperate and work together in the event that other variances or waivers are reasonably necessary to allow Purchaser's Intended Use on the Property. The Seller shall provide written notice to the Purchaser when the Seller has confirmed existing land use and zoning approvals or obtained final land use and zoning approvals from the City for Purchaser's Intended Use of the Property ("**Notice of Land Use and Zoning Approval**").

5.7 Permitting Approvals. Purchaser shall file its plans and Permitting Applications (defined below) with the City of Lakeland for review and approval through the City of Lakeland Development Review Team, provided that the City shall strive to provide prompt review, responses and Permitting Approvals (defined below) regarding any applications or submittals filed by Purchaser for approval.

5.8 Vacation of Right-of-Way. The Seller shall, during the Inspection Period, take the necessary action to vacate the Vacated Right-of-Way (or, at Seller's option, the Vacated Right-of-Way and the remaining former right-of-way for East Main Street that is not a part of the Land) which process shall be completed on or before the expiration of the Inspection Period, and shall file the initial application that is necessary to satisfy this requirement within thirty (30) days after the Effective Date. The value of the Vacated Right-of-Way that is a part of the Land is included in the Purchase Price. In the event that the City has not vacated the Vacated Right-of-Way before the expiration of the Inspection Period, the Inspection Period shall be extended until thirty (30) days after the completion of the City's effort to vacate the Vacated Right-of-Way.

5.9 Upsizing of Utility Line(s). Seller shall be responsible for the costs of any upsizing of any Purchaser utility or other improvements, beyond the size and/or capacity that is necessary to serve Purchaser's Intended Use, that are required by the City.

5.10 Retention of Zoning/Regulatory Authority. Notwithstanding anything in this Agreement to the contrary, the City Commission and its boards and committees shall retain the independent discretion in their capacity as the zoning and regulatory authorities for the City of Lakeland to approve or reject any application for a zoning or land use change, variance, or height adjustment.

PERMITTING PERIOD

6.1 Permitting. The Purchaser shall seek the Permitting Approvals (defined below) during the Inspection Period (the "**Permitting Period**"). The Purchaser will file the necessary applications promptly after the Effective Date (the "**Permitting Applications**") and diligently pursue obtaining all necessary final site plan approval, environmental, building, clearing, grading, and other required governmental approvals for the development of the Property for Purchaser's Intended Use (the "**Permitting Approvals**"). The

application for the site development permit will be filed by Purchaser during the Inspection Period. The other Permitting Applications will be filed by Purchaser at or after Closing. The City shall expedite the review and use its best efforts to approve all Permitting Applications in a timely manner, which obligation of the City shall survive the Closing.

6.2 Termination of Permitting Period. The Purchaser shall have the right at any time during the Permitting Period, not to exceed one hundred and fifty (150) days after the Effective Date unless the Inspection Period or Permitting Period is extended in writing by Seller and Purchaser, to notify Seller and Escrow Agent in writing that it has elected to terminate this Agreement if Purchaser for any reason determines Purchaser will be unable to obtain all Permitting Approvals acceptable to Purchaser to construct designated improvements necessary for Purchaser's Intended Use of the Property. Upon receipt of said written notice by Seller and the Escrow Agent, the Escrow Agent shall return to Purchaser the Earnest Money and neither party shall have any further obligation pursuant to this Agreement except as specifically stated to survive a termination of this Agreement. If Purchaser does not terminate the Agreement prior to the expiration of the Permitting Period, Purchaser shall be deemed to have waived its right to terminate this Agreement pursuant to this paragraph.

TITLE POLICY, SURVEY

7.1 Title. Purchaser has ordered the initial title search and shall, not later than fifteen (15) days after the Effective Date, provide Seller with a copy of a commitment, together with legible copies of all title documents listed as exceptions, from a nationally recognized title insurance company of Purchaser's choice, to be issued through Clark, Campbell, Lancaster & Munson, P.A. (the "**Title Company**") agreeing to issue to Purchaser an Owner's ALTA Form B title insurance policy in the total amount of the Purchase Price insuring fee simple marketable title to the Property. Purchaser shall have thirty (30) days after the Effective Date within which to notify Seller in writing of any defects or objections to the title appearing in said commitment. Seller shall have twenty (20) days after receipt of Purchaser's notice to cure any title objections or defects so specified, or, in the event that the cure requires longer than twenty (20) days to complete, such longer period of time provided that Seller shall have commenced with such cure efforts within such twenty (20) day period and diligently pursues the completion of such cure, but in no event longer than ninety (90) days. Seller must make a good faith effort to cure any title defects or objections and must cure liens or encumbrances evidencing monetary obligations. If Seller fails to remedy said title objections or defects within said period (other than liens or encumbrances evidencing monetary obligations which Seller is required to remove), Purchaser may elect to: (a) terminate this Agreement and receive a return of its Earnest Money; or (b) waive such title objections or defects and consummate the Closing (defined below).

7.2 Free and Clear Conveyance. It is understood and agreed that the Property is being sold by Seller to Purchaser by City Deed (the "**Deed**"), delivered at Closing, free and clear of all liens, claims and encumbrances, real estate taxes and assessments through the Closing so that no permitted exceptions may exist other than those approved by Purchaser in writing.

7.3 Survey. Seller has ordered and shall, at Seller's sole cost and no later than fifteen (15) days after the Effective Date, obtain a current boundary and topographical ALTA survey of the Property (the "**Survey**") that shall include a legal description for the Property ("**Legal Description**"). Seller shall deliver the Survey to Purchaser for review and approval, which approval may not be unreasonably withheld, conditioned or delayed. The Purchaser shall provide its approval or comments regarding the Survey and Legal Description within ten (10) days after receipt of the Survey from Seller. Upon approval of the Legal Description by the parties hereto, the Legal Description shall be added to Exhibit "A" to this Agreement and shall constitute the legal description for the Property.

If the Survey shows (i) any encroachments on the Property, (ii) that improvements, if any, on the Property encroach on other lands, (iii) that the Property is not contiguous to a publicly dedicated right-of-way or other legal access, or (iv) other defects or objections; Purchaser shall notify Seller in writing within fifteen (15) days after Purchaser's receipt of the Survey specifying such defects or objections ("**Survey Objections**"). Seller shall have fifteen (15) days after receipt of Purchaser's Survey Objections to cure such survey defects or objections so specified or, if Seller's cure requires greater than fifteen (15) days, such additional time that is reasonably necessary provided that Seller commences with the cure effort within the initial fifteen (15) day period, diligently and continually pursues the cure of any such defects or objections and that such extended time period shall not in any event exceed sixty (60) days. Seller must make good faith efforts to cure any survey defects or objections. If Seller fails to remedy said survey defects or objections within the time period set forth above, Purchaser may elect to: (a) terminate this Agreement and receive a return of its Earnest Money; or (b) waive such title objections or defects and consummate the Closing.

REPRESENTATIONS, WARRANTIES, AND COVENANTS BY SELLER

Seller hereby represents and warrants to Purchaser the following, which representations and warranties shall be true and shall be deemed to be restated at the Closing.

8.1 **Authority.** Seller has full power and authority to enter into this Agreement. Upon execution hereof, this Agreement shall be the binding and legal obligation of Seller and is enforceable against Seller under the laws of the State of Florida.

8.2 **Environmental.** To the best of Seller's knowledge, without inspection or an obligation to do so, the Property (or any part of the Property) has not in the past been used for handling, storage, transportation or disposal of hazardous or toxic materials; and Seller has not used, generated, manufactured, stored or disposed of on, under or about the Property or transported to or from the Property, and there is not contained on or in any improvements on or under the Property, any flammable explosives, radioactive materials, asbestos, or any substances defined as or included in the definition of "hazardous substance", "hazardous waste", "hazardous materials" or "toxic substances" under any applicable federal or state laws or regulations in effect on the Effective Date or the Closing Date (collectively, the "**Hazardous Materials**"). With regard to the Property, Seller is in compliance with and maintains compliance with all the provisions of the Federal Water Pollution Control Act, Comprehensive Environmental Response, Compensation and Liability ("Superfund") Act of 1980, and Solid Waste Disposal Act, Florida Statutes Chapter 376, and other similar federal, state and local statutory schemes imposing liability on owners of the Property. No inspection, audit or other Investigation has been conducted or requested as to the quality of the air, surface or subsurface conditions at the Property by any party, including public agencies. Furthermore, no written, oral or other type of notice has been received indicating that any third party, including governmental agencies, proposes to carry out an inspection, audit or other investigation of the Property. To the best of Seller's knowledge, there is no evidence of any release of hazardous materials onto or into the Property. No warning notice, notice of violation, administrative complaint, judicial complaint or other formal or informal notice has been issued by a public agency alleging that conditions on the Property are in violation of environmental laws, regulations, ordinances or rules.

Notwithstanding the foregoing to the contrary, in the event that Purchaser's environmental audit reveals any environmental concerns or contamination, the Purchaser shall advise Seller about such environmental concerns or contamination. In the event Seller declines to pay for the remediation of any such matter, Purchaser shall have the option to (a) terminate this Agreement and receive a return of its

Earnest Money; or, (b) close on the property subject to all of the other terms and conditions of this Agreement and to assume all costs and expenses associated with any such remediation.

8.3 Wetlands. The Seller is not aware of any wetlands or surface waters, as defined in Chapter 62-340, Florida Administrative Code, on the Land.

8.4 Governmental Proceedings. Seller has no knowledge of (i) any pending or contemplated annexation or condemnation proceedings, or private purchase in lieu thereof, that affects the Property; (ii) any proposed or pending proceeding to change or redefine the zoning classification of all or any part of the Property except as specifically addressed in this Agreement; (iii) any penalties or interest due with respect to real estate taxes assessed against the Property; and (iv) any proposed change(s) of any median cuts, driveway entrances, traffic patterns or grades which would affect ingress or egress to the Property or which would require a portion of the Property. Seller shall notify Purchaser should it hereafter become aware of any of the foregoing and furnish Purchaser a copy of any notice regarding the Property within five (5) days after receipt.

8.5 Utilities. To the best of Seller's knowledge, all utilities, which are defined to include water, sewer, electric and telephone, are presently available in the vicinity to the Property but may require extensions to the Property boundary as required elsewhere in this Agreement.

8.6 Drainage. Any stormwater or other drainage that runs off the Property and on to a property contiguous to the Property through any drainage system on the Property does so lawfully, either by local law or in accordance with valid public easements or private easements that will inure to the benefit of Purchaser. During the Inspection Period, the Seller shall provide a written authorization or confirmation to Purchaser that authorizes Purchaser to utilize the Seller's existing stormwater management system that presently serves the Property in accordance with the City's ordinary and customary stormwater management provisions.

8.7 Special Assessments. No special assessments have been levied against all or any part of the Property, and Seller has no knowledge of any intended assessments. If any special assessments are levied prior to the Closing, Seller shall be obligated to pay such special assessments at Closing whether or not such assessment is being paid in installments by Seller. Seller shall notify Purchaser immediately after receipt of notice of such assessment by Seller (and in any event before Closing).

8.8 Seller Assistance. Seller shall, upon the reasonable request of Purchaser, and at no expense to Seller, render such assistance and furnish such information to Purchaser in connection with matters relating to the proposed development, construction, and operation of the Property consistent with Purchaser's Intended Use of the Property.

Additionally, Seller hereby appoints Purchaser to act as its agent in connection with obtaining all approvals, authorizations, permissions, permits, designations and classifications desired by Purchaser for Purchaser's Intended Use of the Property (individually, a "**Approval**," and collectively, the "**Approvals**") and agrees to sign a letter of authorization for such in the form required by the appropriate authority, or if required by such authority, to allow Purchaser and Purchaser's legal counsel, engineer and general contractor to sign any applications for such Approvals. Purchaser shall seek and obtain Seller's approval prior to and as a condition precedent to submitting any application regarding any Approval regarding the Property to any governmental entity, department or division.

8.9 Title. Seller has good and marketable title in fee simple absolute to the Property.

8.10 Actions and Proceedings. Seller has no actual knowledge, nor has Seller received any written notice of, nor does Seller know of any basis for, any pending litigation by any organization, person or individual or any claim, action or proceeding, actual or threatened, by any Governmental Authorities or any other party that would materially affect the use, occupancy, leasing or value of the Property or any part thereof. Seller shall notify Purchaser within five (5) days of Seller becoming aware of or receiving notice of any such claim, action or proceeding or the existence thereof, and the action Seller proposes to take to dispose of such claim, action or proceeding. Thereafter, Seller shall commence and diligently pursue disposition of such claim, action or proceeding until completed and shall keep Purchaser notified thereof.

8.11 Governmental Compliance. To the best of the knowledge of Seller, the Property is in compliance with all laws, statutes, ordinances, regulations, orders or requirements affecting the construction, operation, management and maintenance of the Property, and no notice of any violation has been issued by any Governmental Authority. Seller has no knowledge of any notices, suits or judgments relating to any violations of any laws, ordinances or regulations affecting the Property, or any violations or conditions that may give rise thereto, and has no reason to believe that any Governmental Authority contemplates the issuance thereof. There are no federal tax liens affecting the Property.

8.12 Taxes, Assessments, Charges, Etc. All taxes, assessments, water charges, sewer charges, sidewalk improvement charges, street improvement charges and all other charges for public facilities, utilities or similar services of any nature whatsoever which affect the Property have been paid.

8.13 Construction Liens. No labor has been performed, nor materials supplied, relating to the Property for which Seller has not fully paid, or for which a construction or other lien against the Property may be claimed by any person.

8.14 Community Redevelopment Area. The Property is located within the Lakeland Community Redevelopment Area.

8.15 Possession. Seller is and as of the Closing Date will be in possession of the Property, free of any tenancies and rights of third parties.

The truth, accuracy and completeness of each of the representations and warranties of the Seller as set forth in this Section 8 as of the date hereof, and as of closing, shall constitute a condition precedent to the obligations of Purchaser hereunder. Seller shall indemnify and hold Purchaser harmless from any fines, claims, suits, or damages whatsoever in the event that any of the representations or warranties of the Seller set forth in this Section 8 are not true, accurate or complete. The representations and warranties of the Seller as set forth in this Section 8 shall survive two (2) years after the Closing.

REPRESENTATIONS, WARRANTIES AND COVENANTS BY PURCHASER

9.1 Organization. Purchaser is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Florida.

CLOSING

10.1 Closing. The closing (“**Closing**”) shall be held at the office of the Escrow Agent or, at the election of either party, by overnight mail, with payment made by wire transfer of funds within thirty (30) days following written notice from the Purchaser to Seller confirming (a) that the Inspection Period expired without objection from Purchaser; (b) the Permitting Period has expired and Purchaser has received or waived receipt of all Permitting Approvals; (c) Purchaser has received the Notice of Land Use and Zoning Approval; (d) that Seller has vacated the Vacated Right-of-Way; and (e) that Purchaser is prepared to close and to commence with the construction of the Office Building (collectively, the “**Closing Date**”).

10.2 Seller’s Obligations at Closing. At Closing, Seller shall deliver or cause to be delivered to Purchaser the following documents, all in a form reasonable acceptable to the Purchaser and Title Company:

- a. City Deed;
- b. Affidavit stating either that there have been no improvements made to the Property during the ninety (90) days immediately preceding the Closing pursuant to the Agreement or, if there have been any such improvements, that all lienors in connection with such improvements have been paid in full.
- c. Affidavit, in form acceptable to the Title Company, sufficient to remove standard printed exceptions to title in the title insurance policy regarding (i) unrecorded matters (except general real estate taxes not yet due and payable); (ii) parties in possessions; and (iii) mechanic’s liens.
- d. FIRPTA affidavit from Seller.
- e. A Bill of Sale conveying title, free and clear of all liens to (1) any personal property located at the Property or owned and used in connection therewith; (2) all licenses and permits, or other contracts, warranties or guaranties, affecting the Property, including all wastewater and storm drainage capacity reservations and agreements, if any (3) all zoning permits or classifications, if any; and (4) all plans, permits, licenses and other authorization and agreements relating to the use or operation of the Property, if any.
- f. A Certificate, dated as of the date of the closing and signed by the Seller, stating that the representations and warranties contained herein are true, correct and complete as of such date.
- g. An executed Closing Statement that reflects the terms of this Agreement.

10.3 Purchaser’s Obligations at Closing. At Closing, Purchaser shall deliver to Seller the following:

- a. The Balance of Purchase Price at Closing, as defined in Paragraph 2.2 above, less twenty-five percent (25%) of the Net Seller Contribution;
- b. If applicable, a copy of Purchaser’s entity documents, and all amendments thereto, certified as true and complete, as of the Closing Date, and all other documents deemed necessary by the Title Company so as to evidence authorization for the actions to be

taken by Purchaser or Purchaser's assignee, as well as the authority of the person signing this Agreement and the closing documents; and

- c. An executed Closing Statement that reflects the terms of this Agreement.

CLOSING COSTS, PRORATIONS OF RENTS TAXES AND MISCELLANEOUS EXPENSES

11.1 **Closing Costs.** Purchaser and Seller shall each pay their own attorney's fees, costs and expenses. At Closing, Purchaser shall pay the costs associated with financing the purchase of the Property, if any, with a mortgagee's title policy, including the cost of any endorsements required to the owner's or mortgagee's title policy by Purchaser or Purchaser's lender, and the cost of recording the Deed. At Closing, Seller shall pay all other closing costs including all documentary stamp taxes to be affixed to the Deed and the title insurance premium (not exceeding the Florida promulgated rate) for the owner's title policy based on the Purchase Price.

11.2 **Real Property Taxes.** Real property taxes on the Property, and any other taxes associated with the Property for the year of closing shall be prorated as of the Closing. If the tax bill for the year of closing has not been issued prior to Closing, such taxes shall be prorated based upon the tax bill issued for the previous year, with known changes, if any.

RISK OF LOSS

12.1 **Casualty.** Seller assumes all risk and liability, damage to or injury occurring to the Property by fire, storm, accident or any other casualty or cause until the Closing has been consummated, except to the extent caused by the Property Inspections, in which case Purchaser shall be responsible as provided in Paragraph 4.2 above. If the Property or any part thereof, suffers any damages prior to the Closing from fire or other casualty, except to the extent caused by the Property Inspections, Purchaser may either (a) terminate this Agreement and the Earnest Money shall be returned to Purchaser; or (b) without repairing such damage, consummate the Closing, in which latter event the proceeds of any insurance covering such damage shall be assigned to Purchaser at Closing.

12.2 **Condemnation.** If, prior to Closing, action is initiated or threatened to take a material part of the Property by eminent domain proceedings or by deed in lieu under threat thereof, or if Purchaser is advised that a material part of the Property will be required to be donated as a condition to the issuance of a building permit, Purchaser may either (a) terminate this Agreement and receive a refund of the Earnest Money; or (b) consummate the Closing in which latter event any award received or to be received by Seller from the condemning authority related to the Property shall be assigned to Purchaser at the Closing. For purposes of this Section 12.2, a "material part" shall be deemed to mean a taking which impairs the ability of the Purchaser to develop the Property or to construct the improvements necessary for Purchaser's Intended Use of the Property.

DEFAULT

13.1 **Default by Seller.** If Seller defaults under the terms of this Agreement, Purchaser may either terminate this Agreement and be entitled to the immediate return of the Earnest Money or seek judicial enforcement of this Agreement, including, without limitation, all legal remedies available to Purchaser, including, without limitation, specific performance.

13.2 **Default by Purchaser.** If Purchaser defaults under the terms of this Agreement, Seller shall be entitled to retain the Earnest Money as agreed upon as liquidated damages (not as a penalty, the parties hereby acknowledging that the Seller's damages in the premises are uncertain) as it's sole and exclusive remedy.

MISCELLANEOUS

14.1 **Notices.** All notices shall be in writing unless provided for elsewhere in this Agreement and shall be deemed delivered and received (a.) on the date when personally delivered, (b.) on the date sent by facsimile transmission with electronic verification of transmission or by email transmission sent to the party to receive such notice, (c.) on the date when actually received when delivered by a commercial express delivery service who obtains a receipt, or (d.) three (3) days after deposit in any post office or mail receptacle maintained or authorized by the United States Postal Service, certified or registered mail, return receipt requested, postage prepaid, addressed as follows:

As to Purchaser: Summit Real Estate Holdings, LLC
c/o Great American Insurance Company
301 East Fourth Street
Cincinnati, Ohio 45202
Attn: Matthew Felvus, Assistant General Counsel
Email: mfelvus@gaig.com

With a copy to: Timothy F. Campbell, Esquire
Clark, Campbell, Lancaster & Munson, P.A.
500 South Florida Avenue, Suite 800
Lakeland, Florida 33801
Email: tcampbell@cclmlaw.com

As to Seller: City of Lakeland
Attention: Tony Delgado, City Manager
228 South Massachusetts Avenue
Lakeland, Florida 33801
Email: Anthony.Delgado@lakelandgov.net

With a copy to: Palmer C. Davis, Office of City Attorney
228 South Massachusetts Avenue
Lakeland, Florida 33801
Phone: (863) 834-6010
Email: palmer.davis@lakelandgov.net

As to Escrow Agent: Timothy F. Campbell, Esquire
Clark, Campbell, Lancaster & Munson, P.A.
500 South Florida Avenue, Suite 800
Lakeland, Florida 33801
Phone: (863) 647-5337
Fax: (863) 647-5012
Email: tcampbell@cclmlaw.com

14.2 **Broker.** Seller and Purchaser represent and warrant to each other that no brokers have been involved in connection with the transaction contemplated by this Agreement. Each party agrees to defend,

indemnify and hold the other harmless from and against any and all expense, cost, damage or liability resulting from the claims of any brokers or those claiming to have performed services in the nature of brokerage services for either one of the parties.

14.3 Escrow Agent. Clark, Campbell, Lancaster & Munson, P.A., Escrow Agent, agrees to hold any funds entrusted to it on the following terms and conditions:

Escrow Agent shall deposit all escrowed funds into an escrow account at a bank licensed to conduct business in the State of Florida.

The Escrow Agent undertakes to perform only such duties as are expressly set forth in this Agreement and this paragraph. The Escrow Agent shall not be deemed to have any implied duties or obligations under or related to this Agreement and this paragraph.

The Escrow Agent may (a) act in reliance upon any writing or instrument or signature which it, in good faith, believes to be genuine; (b) assume the validity and accuracy of any statement or assertion contained in such a writing or instrument; and (c) assume that any person purporting to give any writing, notice, advice or instructions in connection with the provisions of this Agreement and this paragraph has been duly authorized to do so. The Escrow Agent shall not be liable in any manner for the sufficiency or correctness as to form, manner of execution, or validity of any instrument deposited in escrow, nor as to the identity, authority, or right of any person executing any instrument; the Escrow Agent's duties under this Agreement and this paragraph are and shall be limited to those duties specifically provided in this Agreement and this paragraph.

Escrow Agent shall not be liable for any loss or damage resulting from:

- The financial status or insolvency of any other party, or any misrepresentation made by any other party.
- The legal effect, insufficiency, or undesirability of any instrument deposited with or delivered by or to the escrow agent or exchanged by the parties hereunder, whether or not the escrow agent prepared such instrument.
- The default, error, action or omission of any other party to the escrow.
- Any loss or impairment of funds that have been deposited in escrow while those funds are in the course of collection or while those funds are on deposit in a financial institution if such loss or impairment results from the failure, insolvency or suspension of a financial institution, or any loss or impairment of funds due to the invalidity of any draft, check, document or other negotiable instrument delivered to the escrow agent.
- The expiration of any time limit or other consequence of delay, unless a properly executed settlement instruction received by the escrow agent has instructed the escrow agent to comply with said time limit.
- The escrow agent's compliance with any legal process, subpoena, writ, order, judgment or decree of any court, whether issued with or without jurisdiction and whether or not subsequently vacated, modified, set aside or reversed.
- Any shortfall in the sufficiency of the amount held in escrow to accomplish the purpose of the escrow.
- Any obligation to collect additional funds, unless such obligation is in writing and signed by the escrow agent.

The parties to this Agreement do and shall indemnify the Escrow Agent and hold it harmless from any and all claims, liabilities, losses, actions, suits or proceedings at law or in equity, or other expenses, fees, or charges of any character or nature, including attorneys' fees and costs, which it may incur or with which it may be threatened by reason of its action as the Escrow Agent under this Agreement, except for such matters which are the result of the Escrow Agent's negligence or willful malfeasance. The Escrow Agent shall be vested with a lien on all property deposited under this Agreement for the purpose of such indemnification, and for any other expense, fees or charges of any character or nature, which may be incurred by the Escrow Agent in its capacity as escrow agent. The Escrow Agent has and shall have the right, regardless of any instructions, to hold the property deposited in escrow until and unless said additional expenses, fees and charges shall be fully paid.

If the parties (including the Escrow Agent) shall be in disagreement about the interpretation of this Agreement, or about their respective rights and obligations, or about the propriety of any action contemplated by the Escrow Agent, the Escrow Agent may, but shall not be required to, file an action in interpleader to resolve the disagreement; upon filing such action, the Escrow Agent shall be released from all obligations under this Agreement. The Escrow Agent shall be indemnified for all costs and reasonable attorneys' fees, including those for appellate matters and for paralegals and similar persons, incurred in its capacity as escrow agent in connection with any such interpleader action. The Escrow Agent shall be fully protected in suspending all or part of its activities under this Agreement until a final judgment in the interpleader action is received.

The Escrow Agent may consult with counsel of its own choice and shall have full and complete authorization and protection in accordance with the opinion of such counsel. The Escrow Agent shall otherwise not be liable for any mistakes of fact or errors of judgment, or for any acts or omissions of any kind unless caused by its gross negligence or willful misconduct. The Escrow Agent may resign upon five (5) days' written notice to Seller and Purchaser. If a successor escrow agent is not appointed jointly by Seller and Purchaser within the five (5) day period, the Escrow Agent may petition a court of competent jurisdiction to name a successor.

The Escrow Agent represents Purchaser in connection with this transaction. In the event of any disputes as to which party is entitled to the Earnest Money, or in the event any disagreement shall arise as a result of this Agreement or the transaction contemplated hereby, the Escrow Agent shall not be excluded from representing Purchaser by virtue of its serving as Escrow Agent pursuant to this Agreement. The Seller hereby acknowledges and consents to the representation of the Purchaser by Clark, Campbell & Lancaster, P.A.

As used herein, the term "**Escrow Agent**" includes the employees and attorneys of Escrow Agent. The provisions of this Section 14.3 shall survive Closing.

14.4 Entire Agreement. This Agreement and the Exhibits hereto embody the entire agreement between the parties relative to the subject matter, and there are no oral or written agreements between the parties, nor any representations made by either party relative to the subject matter, which are not expressly set forth herein.

14.5 Amendment. This Agreement may be amended only by a written instrument executed by the party or parties to be bound thereby.

14.6 Headings. The captions and headings used in this Agreement are for convenience only and do not in any way limit, amplify, or otherwise modify the provisions of this Agreement.

14.7 Time of the Essence. Time is of significant essence of this Agreement. Seller and Purchaser shall each expedite their respective design, review, approval, permitting and construction obligations as set forth in this Agreement. However, if the final date of any period which is set out in any provision of this Agreement falls on a Saturday, Sunday or legal holiday under the law of the United States or the State of Florida, in such event, the time of such period shall be extended to the next day which is not a Saturday, Sunday or legal holiday.

14.8 Governing Law; Venue. This Agreement shall be construed in accordance with and governed by the laws of the State of Florida and the laws of the United States pertaining to transactions in Florida. Venue for any action arising hereunder shall lie in the court having jurisdiction in Polk County, Florida.

14.9 Successors and Assigns. This Agreement shall bind and inure to the benefit of Seller, Purchaser and their respective heirs, executors, administrators, personal legal representatives, successors and assigns. Purchaser may assign Purchaser's rights under this Agreement to any entity controlled by Purchaser with Seller's prior written consent which may not be unreasonably withheld.

14.10 Attorneys' Fees. In the event it becomes necessary for either party hereto to file suit to enforce this Agreement or any provision contained herein, the party prevailing in such suit shall be entitled to recover, in addition to all other remedies or damages as herein provided, reasonable attorneys', paralegals', or expert witnesses' fees and costs incurred in such suit at trial or on appeal or in connection with any bankruptcy or similar proceedings.

14.11 Radon Gas. Pursuant to and in accordance with Section 404.056(5), Florida Statutes, Seller and Purchaser hereby acknowledge that radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit.

14.12 Effective Date. The Effective Date means the date of execution of this Agreement by the last of Seller and Purchaser to execute same.

14.13 Section 1031 Exchange. Either Seller or Purchaser shall have the right to treat this Property as part of a tax-deferred like-kind exchange under Section 1031 of the Internal Revenue Code and, to that end, shall have the right to assign or otherwise alter this Agreement in order to accomplish that objective, provided the net economic effect (including exposure to liability) shall be essentially the same as under this original Agreement.

14.14 This Agreement shall expire one year from the Effective Date if Purchaser has failed to conduct the Closing pursuant to the provisions hereof.

14.15 Repurchase Provision. Seller shall have the right, but not the obligation, to elect to purchase the Property back from Purchaser (the "**Repurchase**") if Purchaser refuses or fails to commence with construction of the Office Building on or before two years after the date of Closing (the "**Repurchase Provision Trigger Date**"), by providing written notice of such election within thirty (30) days after the Repurchase Provision Trigger Date and, in such event, closing on the Repurchase of the Property from Purchaser within thirty (30) days of such written notice. In the event of such Repurchase, the Seller shall pay the Purchase Price to Purchaser and shall be responsible for all costs associated with such Repurchase. This provision shall survive the Closing.

14.16 This Agreement shall not be recorded in the public records.

14.17 WAIVER OF JURY TRIAL. SELLER AND PURCHASER WAIVE THE RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED UPON, OR RELATED TO, THE SUBJECT MATTER OF THIS AGREEMENT. THIS WAIVER IS KNOWINGLY, INTENTIONALLY AND VOLUNTARILY MADE BY EACH PARTY AND EACH PARTY HEREBY REPRESENTS AND WARRANTS THAT NO PERSONS OR ENTITIES ACTING ON BEHALF OF THE OTHER PARTY HAS MADE ANY REPRESENTATIONS OF FACT TO INDUCE THIS WAIVER OF TRIAL BY JURY OR IN ANY WAY TO MODIFY OR NULLIFY ITS EFFECT. EACH PARTY ACKNOWLEDGES TO THE OTHER THAT IT HAS READ AND UNDERSTANDS THE MEANING AND EFFECT OF THIS WAIVER PROVISION.

(SIGNATURE BLOCKS ON FOLLOWING PAGES)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year written below.

SELLER:

CITY OF LAKELAND, a municipal corporation of the State of Florida

ATTEST:

Kelly Koos,
Clerk of the Lakeland City Commission

City Commission for the City of
Lakeland, Florida

By: _____
Signature

By: _____
H. William Mutz, Mayor

Date: _____

Date: December ___, 2019

APPROVED AS TO FORM AND CORRECTNESS

Palmer C. Davis, Interim City Attorney
City of Lakeland

By: _____
Palmer C. Davis, Interim City Attorney

Date: December ___, 2019

PURCHASER

SUMMIT REAL ESTATE HOLDINGS, LLC.,
a Florida limited liability company

By: _____

Name: _____

Title: _____

Date: December ___, 2019

ESCROW AGENT

CLARK, CAMPBELL, LANCASTER & MUNSON, P.A.

By: _____
Timothy F. Campbell, President

Date: _____

EXHIBIT “A” – LEGAL DESCRIPTION (2 Pages)

DESCRIPTION SKETCH

SURVEYOR'S NOTES:

- 1) This is not a boundary survey.
- 2) Bearing's are based on the platted East line of Massachusetts Avenue of Munn's Survey of Lakeland, as depicted in Deed Book G, Page 392, being assumed South 00°35'19" East.

DESCRIPTION:

A parcel of land being a portion of Lots A through D, Block 16 of Munn's Survey of Lakeland, as depicted in Deed Book G, Page 392, being more particularly described as follows:

COMMENCE at the Northwest corner of said Lot A; thence South 00°35'19" East, along the platted East right-of-way line of Massachusetts Avenue of said Munn's Survey of Lakeland, 219.00 feet to the North line of said Lot D; thence North 89°47'01" East, along said North line, 12.35 feet to the POINT OF BEGINNING; thence South 00°35'19" East, 59.67 feet; thence North 89°47'01" East, 142.18 feet; thence North 00°04'46" East, 59.67 feet to the North line of said Lot D, also being the beginning of a non-tangent curve to the right having a radius of 146.69 feet, a central angle of 30°13'20", a chord bearing of North 17°07'56" East, and a chord distance of 76.48 feet; thence along said curve, 77.37 feet to the North line of said Lot C, also being the beginning of a non-tangent curve to the right having a radius of 622.41 feet, a central angle of 08°28'51", a chord bearing of North 41°49'49" East, and a chord distance of 92.04 feet; thence along said curve, 92.13 to the being the beginning of a non-tangent curve to the right having a radius of 880.31 feet, a central angle of 00°26'36", a chord bearing of North 46°45'58" East, and a chord distance of 6.81 feet; thence along said curve, 6.81 feet to the North line of said Lot B, also being the beginning of a non-tangent curve to the right having a radius of 880.31 feet, a central angle of 04°40'05", a chord bearing of North 49°19'19" East, and a chord distance of 71.70 feet; thence along said curve, 71.72 feet; thence North 02°13'45" West, 26.49 feet to a point lying North 89°47'01" East, 299.71 feet from the Northwest corner of said Lot A, also being on the North line of said Lot A, also being the South right-of-way line of Cedar Street of said Munn's Survey of Lakeland; thence South 89°47'01" West, along said South right-of-way line, 20.56 feet; thence South 81°39'15" West, 17.26 feet; thence South 86°28'08" West, 36.30 feet; thence South 89°47'01" West, 202.60 feet; thence South 40°46'58" West, 16.41 feet; thence South 00°35'19" East, 56.07 feet to said North line of Lot B; thence continue South 00°35'19" East, 73.00 feet to said North line of Lot C; thence continue South 00°35'19" East, 73.00 feet to the POINT OF BEGINNING.

Said Parcel containing 1.21 acres, more or less.

CERTIFICATION:

I hereby certify that this drawing correctly reflects the results of a recent survey made under my direction and this survey was made in accordance with Standards of Practice adopted by the State of Florida Department of Agriculture and Consumer Services, Board of Professional Surveyors and Mappers, Chapter 5J-17 of the Florida Administrative Code, pursuant to Section 472.027, Florida Statutes.


FRED P. AMMERMAN, R.L.S.
FLORIDA REGISTRATION #4220

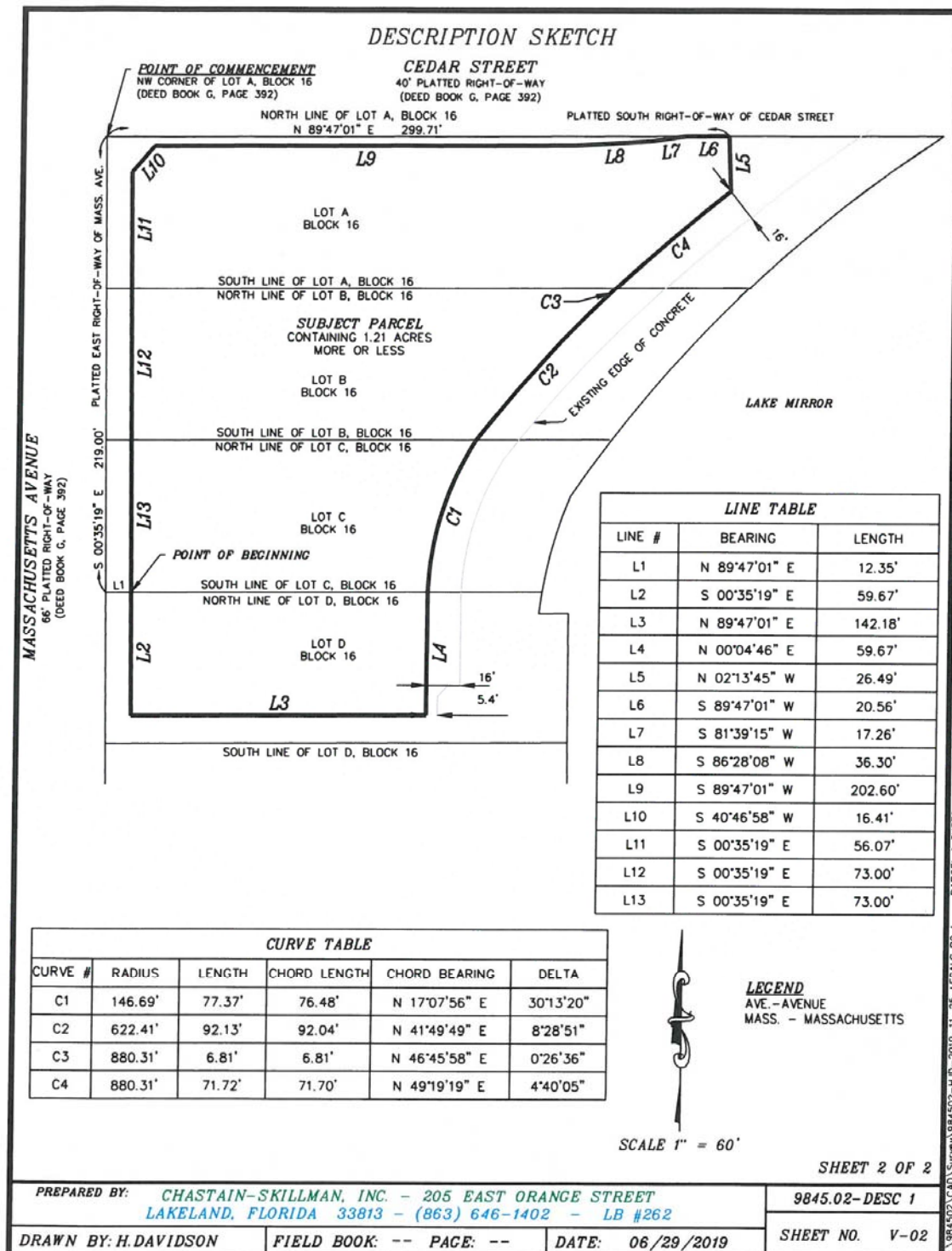
FAMMERMAN@CHASTAINSKILLMAN.COM
THE SURVEY MAP AND REPORT OR THE COPIES THEREOF ARE NOT VALID WITHOUT THE ORIGINAL SIGNATURE AND SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.

STATE OF

REVISION 11/18/2019- CHANGED BOUNDARY PER CLIENTS REQUEST

SHEET 1 OF 2

PREPARED BY: CHASTAIN-SKILLMAN, INC., 205 EAST ORANGE STREET LAKELAND, FLORIDA 33813 (863) 646-1402 - LB #262		984502-DESC 1
DRAWN BY: H.DAVIDSON	FIELD BOOK: -- PAGE: --	DATE: 06/29/2019
		SHEET NO. V-01



**EXHIBIT “B” – PARKING LEASE AGREEMENT
(Beginning on Following Page)**

PARKING LEASE AGREEMENT

This Parking Lease Agreement (“**Lease Agreement**”) is made and entered into this ___ day of _____, 20___, by and between Summit Real Estate Holdings, LLC, a Florida limited liability company, whose address is 2310 Commerce Point Drive, Lakeland, Florida 33801 (“**SREH**”), and the City of Lakeland, a municipal corporation of the State of Florida, whose address is 228 South Massachusetts Avenue, Lakeland, Florida 33801 (“**City**”).

WITNESSETH

WHEREAS, the City is the owner of the real property located east of North Massachusetts Avenue and south of East Main Street in Lakeland, Polk County, Florida generally depicted in the attached Exhibit “A,” attached hereto and incorporated by reference, that includes a portion of the former right-of-way for East Main Street (the “**Property**”); and

WHEREAS, the City and SREH have entered into a purchase and development agreement (“**Purchase and Development Agreement**”) whereby SREH agrees to purchase from City and City agrees to sell to SREH the Property for the development of an approximately 135,000 square foot Class “A” office building, approximately nine (9) stories in height with approximately four hundred and fifty (450) parking spaces (“**Total Parking Spaces**”) within the office building (collectively, the “**Office Building**”); and

WHEREAS, the City has agreed, in the Purchase and Development Agreement, to contribute \$2,500,000.00 (“**Public Parking Consideration**”) towards the costs of constructing the Total Parking Spaces provided that SREH agrees to lease the City the number of non-exclusive parking spaces of the Total Parking Spaces that are specified, along with the location of such non-exclusive parking spaces, in the attached Exhibit “B” attached hereto and incorporated herein by reference (“**Public Parking Spaces,**” the final number of which shall be subject to final design details, but shall in no event be less than one hundred and fifty (150) non-exclusive parking spaces) from 6:00 p.m. until 3:00 a.m. on Mondays through Fridays and 6:00 a.m. until 3:00 a.m. on Saturdays and Sundays for use by the public (“**Public Parking Period**”) in accordance with and subject to the terms and provisions of this Lease Agreement. The lease for the Public Parking Spaces is non-exclusive only because the employees of the Office Building or the guests or invitees of SREH may also utilize the Public Parking Spaces during the Public Parking Period in conjunction with the public.

NOW, THEREFORE in consideration of the covenants and provisions herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, SREH and City agree as follows:

1. Lease of the Public Parking Spaces. SREH hereby grants to the City a non-exclusive lease of the Public Parking Spaces in the Office Building during the Public Parking Period, subject to change as set forth herein.
2. Use of the Public Parking Spaces. The City may allow the non-exclusive use of the Public Parking Spaces to the public for the parking of passenger vehicles, and no other vehicles, during the Public Parking Period. SREH may adopt, and modify from time to time, reasonable rules, regulations and restrictions, including, without limitation, those related to size and height which are applied to all using the Public Parking Spaces (“**Parking Space Operating Rules and Regulations**”). The Parking Space Operating Rules and Regulations shall apply to the City and to the public who use the Public Parking Spaces during the Public Parking Period. Should the City charge for the public use of the non-exclusive Public

Parking Spaces during the Lease Term (defined below), employees of the Office Building shall be exempt from any such charge for use of the non-exclusive Public Parking Spaces during the Public Parking Period.

3. Lease Term. The term of this Lease Agreement shall be for a period of thirty (30) years (the “**Lease Term**”). The Lease Term shall begin upon the date on which SREH has completed construction of the Office Building and notified the City in writing that the Public Parking Spaces are ready for use by the public during the Public Parking Period (“**Lease Commencement Date**”).

4. Fees. The City shall contribute the Public Parking Consideration as consideration for the lease of the Public Parking Spaces for public use during the Public Parking Period (the “**Lease Payment**”).

5. Assignment and Sublease. SREH shall have the authority as a matter of right to assign any interest in this Lease Agreement or in the Public Parking Spaces, subject to the provisions of this Lease Agreement, by providing written notice of such assignment to City. The City shall not have the right to assign or sublease any interest it may have in this Lease Agreement or in the Public Parking Spaces other than to allow the general public to utilize the non-exclusive Public Parking Spaces during the Public Parking Period pursuant to the terms of this Lease Agreement and subject to the Parking Space Operating Rules and Regulations.

6. Default by SREH. If SREH fails to perform or fulfill any obligation under this Lease Agreement, SREH shall be in default. Subject to any statute, ordinance or law to the contrary, SREH shall have sixty (60) days from the date of written notice of default by the City to challenge or cure the default. In the event SREH does not challenge or cure the alleged default, the City may at City’s option (a) cure such default at SREH’s sole cost and expense; or (b) seek all available legal remedies against SREH as a result of such default.

7. Default by City. If City fails to perform or fulfill any obligation under this Lease Agreement or the Parking Space Operating Rules and Regulations, but specifically not including any breaches of such Parking Space Operating Rules and Regulations by the public, the City shall be in default. Subject to any statute, ordinance or law to the contrary, the City shall have sixty (60) days from the date of written notice of default by SREH to challenge or cure the default. In the event City does not challenge or cure the alleged default within such sixty (60) day period, SREH may at SREH’s option (a) cure such default at the City’s sole cost and expense; or (b) terminate this Lease Agreement and pay to the City one-half of the Termination Payment that is calculated pursuant to Section 10.a. below, in which event the Public Parking Spaces shall thereafter no longer be available for use by the public.

8. Surrender of Possession of Public Parking Spaces. At the expiration or earlier termination of the Lease Agreement, the City shall peaceably surrender the Public Parking Spaces to SREH in as good condition as existed on the Lease Commencement Date, with the exception of reasonable wear and tear.

9. Maintenance, Operation and Repairs. Maintenance and operation of the Public Parking Spaces will be the responsibility of SREH. However, the City shall reimburse SREH, within sixty (60) days after receipt of written request for such payment and supporting documentation, for any costs incurred by SREH to repair damages, including, without limitation, any replacements that are necessary to repair any such damage, to the Public Parking Spaces as a result of the use of the Public Parking Spaces by the City or the public during the Public Parking Period.

10. Termination of Lease Agreement.

- a. **Termination for Convenience.** Notwithstanding anything herein to the contrary, SREH may terminate this Lease Agreement (the “**Lease Termination**”), at any time after the first three (3) years of the Lease Term, by providing at least one hundred fifty (150) days advance written notice to the City (“**Lease Termination Notice**”) in which the termination date for the Lease Agreement is identified (“**Lease Termination Date**”). In the event SREH provides the City with a Lease Termination Notice, SREH shall pay the City, within thirty (30) days after the Lease Termination Date, one hundred and ten percent (110%) of the pro-rata balance of the Public Parking Consideration (the “**Termination Payment**”). The Termination Payment shall be calculated as of the Lease Termination Date in accordance with the following formula: the product of (i) number of full months remaining in the Lease Term, divided by 360; multiplied by (ii) Public Parking Consideration. Notwithstanding anything herein to the contrary, SREH may not exercise a Termination for Convenience within the first three (3) years of the Lease Term.
- b. **Termination for Cause.** SREH may terminate this Lease Agreement by delivery of written notice identifying the cause for such termination (“**Notice of Termination For Cause**”) to the City, in the event that SREH, in SREH’s sole discretion, determines that either (i) the use, by the City or the public, of the Public Parking Spaces during the Public Parking Period is creating or has created an unsafe or hazardous condition on the Property; or (ii) the public is violating the Parking Space Operating Rules and Regulations (a “**Termination For Cause**”). In the event that SREH delivers the Notice of Termination for Cause to the City, the City shall provide a written response to the Notice of Termination for Cause within five (5) business days after receipt of the Notice of Termination for Cause of its intent to cure the cause identified in the Notice of Termination for Cause and shall thereafter promptly, but in no event greater than fifteen (15) business days after the receipt of the Notice of Termination For Cause unless a longer period of time is approved by SREH in writing, and diligently implement a cure of such cause to SREH’s satisfaction. SREH shall reasonably cooperate with the City in its effort to cure any cause but shall have sole discretion in determining whether or not the City has cured the cause that serves the basis of the Termination For Cause. If the City does not seek to cure the cause or fails to cure the cause within fifteen (15) business days after the receipt of the Notice of Termination for Cause or such other period that may be approved by SREH in writing, SREH may terminate this Lease Agreement by providing further written notice of the termination of the Lease, which shall be effective the next business day after delivery of such notice (“**Lease Termination Date For Cause**”) and SREH shall thereafter make the Termination Payment to the City, calculated as provided for in Section 10.a above, within thirty (30) days after the Lease Termination Date For Cause.

11. **Indemnification.** Subject to the monetary and other liability limits set forth in Fla. Stat. 768.28, the City agrees to defend, indemnify, and hold SREH harmless from any and all claims alleging damage or injury caused to vehicles, personal property, or any person or persons arising out of or in connection with the use of the Public Parking Spaces during the Public Parking Period by the City or public, and hereby specifically agrees that SREH shall not be responsible for any such damage or injury.

12. **Insurance.** The City self-insures for its general liability and automobile liability risk, subject to the principals of governmental immunity, and in accordance with Florida law.

13. Security and Responsibility for Loss. The City understands and acknowledges that SREH is not required to and will not provide any security alarm system or other security for the Public Parking Spaces.

14. Notices. All notices, demands, approvals, requests, and other communication required or permitted hereunder shall be in writing and shall be deemed to be delivered and received upon the earlier of (i) actual receipt; (ii) the next business day following its deposit with a reputable overnight courier or (iii) the third (3rd) day following its deposit in a regularly maintained receptacle for the United States Mail, as registered or certified mail, return receipt requested, postage fully prepaid, addressed to the addressee as its address is set forth below, or at such other address as such addressee may have specified by notice delivered in accordance with this paragraph and actually received by the addressee:

If to Summit:

Carol Sipe
Summit Consulting, LLC
2310 Commerce Point Drive
Lakeland, Florida 33801
Phone: 863-647-1100
Email: Carol.Sipe@summitholdings.com

With a copy to:

Timothy F. Campbell, Esquire
Clark, Campbell, Lancaster & Munson, P.A.
500 South Florida Avenue, Suite 800
Lakeland, Florida 33801
Phone: (863) 647-5337
Email: tcampbell@cclmlaw.com

If to the City:

City Manager
The City of Lakeland
228 South Massachusetts Avenue
Lakeland, Florida 33801
Phone: (863) 834-6000
Email: Anthony.delgado@lakelandgov.net

With a copy to:

City Attorney's Office
228 South Massachusetts Avenue
Lakeland, Florida 33801
(863) 834-6010
Email: palmer.davis@lakelandgov.net

15. Governing Law; Venue. Florida law shall govern the validity, enforcement, and interpretation of this Lease Agreement. The Parties acknowledge and agree that venue for any action arising hereunder shall lie in Polk County, Florida.

16. Severability. A determination that any provision of this Lease Agreement is unenforceable or invalid shall not affect the enforceability or validity of any other provision, and any determination that the application of any provision of this Lease Agreement to any person or circumstance is illegal or

unenforceable shall not affect the enforceability or validity of such provision as it may apply to any other persons or circumstances.

17. No Waiver. The failure of any party to insist upon strict performance of any of the terms, covenants or conditions hereof shall not be deemed a waiver of any rights or remedies which that party may have hereunder, at law or in equity, and shall not be deemed a waiver of any subsequent breach or default in any of such terms, covenants or conditions. No waiver shall be implied from any omission by a party to take action in respect to such default. No waiver of any provisions of this Lease Agreement shall be effective, unless it is in writing signed by the party against whom it is asserted, and any such waiver shall only be applicable to the specific incident to which it relates and shall not be deemed to be a continuing or future waiver.

18. Time. Time is of the essence of this Lease Agreement.

19. Entire Agreement and Modifications. This Lease Agreement constitutes the entire understanding and agreement between the parties and shall not be changed, altered or modified, except by an instrument in writing signed by the party against whom enforcement of such change would be sought. This Lease Agreement shall not be modified and/or terminated and any purported modification and/or termination hereof shall not be effective, unless in writing and signed by the party to be charged. Each party may consider, approve or disapprove of any proposed amendment to, or termination of, this Lease Agreement in its sole and absolute discretion.

20. Costs of Enforcement. If any party brings an action against another party under this Lease Agreement, the prevailing party in the action shall be entitled to collect all of its costs of the action, including reasonable attorneys' fees, from the non-prevailing party.

21. Interpretation. All parties to this Lease Agreement have had significant and equal input in its drafting and preparation. No presumption shall arise that one or the other party had any greater role in such drafting and that thereby this Lease Agreement shall be interpreted against such party.

22. Effective Date. The effective date of this Lease Agreement shall be the date upon which the last of the parties hereto executes the document.

IN WITNESS WHEREOF, the parties hereto have caused this Lease Agreement to be executed in their names intending to be fully bound hereby as of the date and year first above written.

(SIGNATURE BLOCKS ON FOLLOWING PAGE)

SREH:

Summit Real Estate Holdings, LLC, a Florida
limited liability company

Print Name: _____

Print Name: _____

By: _____

Print Name: _____

Title: _____

Date: _____

CITY:

City of Lakeland, a municipal corporation of
the State of Florida

Print Name: _____

Print Name: _____

By: _____

Print Name: _____

Title: _____

Date: _____

EXHIBIT "A"
Property (2 Pages)

EXHIBIT ONLY

DESCRIPTION SKETCH

SURVEYOR'S NOTES:

- 1) This is not a boundary survey.
- 2) Bearing's are based on the platted East line of Massachusetts Avenue of Munn's Survey of Lakeland, as depicted in Deed Book G, Page 392, being assumed South 00°35'19" East.

DESCRIPTION:

A parcel of land being a portion of Lots A through D, Block 16 of Munn's Survey of Lakeland, as depicted in Deed Book G, Page 392, being more particularly described as follows:

COMMENCE at the Northwest corner of said Lot A; thence South 00°35'19" East, along the platted East right-of-way line of Massachusetts Avenue of said Munn's Survey of Lakeland, 219.00 feet to the North line of said Lot D; thence North 89°47'01" East, along said North line, 12.35 feet to the POINT OF BEGINNING; thence South 00°35'19" East, 59.67 feet; thence North 89°47'01" East, 142.18 feet; thence North 00°04'46" East, 59.67 feet to the North line of said Lot D, also being the beginning of a non-tangent curve to the right having a radius of 146.69 feet, a central angle of 30°13'20", a chord bearing of North 17°07'56" East, and a chord distance of 76.48 feet; thence along said curve, 77.37 feet to the North line of said Lot C, also being the beginning of a non-tangent curve to the right having a radius of 622.41 feet, a central angle of 08°28'51", a chord bearing of North 41°49'49" East, and a chord distance of 92.04 feet; thence along said curve, 92.13 to the being the beginning of a non-tangent curve to the right having a radius of 880.31 feet, a central angle of 00°26'36", a chord bearing of North 46°45'58" East, and a chord distance of 6.81 feet; thence along said curve, 6.81 feet to the North line of said Lot B, also being the beginning of a non-tangent curve to the right having a radius of 880.31 feet, a central angle of 04°40'05", a chord bearing of North 49°19'19" East, and a chord distance of 71.70 feet; thence along said curve, 71.72 feet; thence North 02°13'45" West, 26.49 feet to a point lying North 89°47'01" East, 299.71 feet from the Northwest corner of said Lot A, also being on the North line of said Lot A, also being the South right-of-way line of Cedar Street of said Munn's Survey of Lakeland; thence South 89°47'01" West, along said South right-of-way line, 20.56 feet; thence South 81°39'15" West, 17.26 feet; thence South 86°28'08" West, 36.30 feet; thence South 89°47'01" West, 202.60 feet; thence South 40°46'58" West, 16.41 feet; thence South 00°35'19" East, 56.07 feet to said North line of Lot B; thence continue South 00°35'19" East, 73.00 feet to said North line of Lot C; thence continue South 00°35'19" East, 73.00 feet to the POINT OF BEGINNING.

Said Parcel containing 1.21 acres, more or less.

CERTIFICATION:

I hereby certify that this drawing correctly reflects the results of a recent survey made under my direction and this survey was made in accordance with Standards of Practice adopted by the State of Florida Department of Agriculture and Consumer Services, Board of Professional Surveyors and Mappers, Chapter 5J-17 of the Florida Administrative Code, pursuant to Section 472.027, Florida Statutes.


FRED P. AMMERMAN, R.L.S.
FLORIDA REGISTRATION #4220

FAMMERMAN@CHASTAINSKILLMAN.COM
THE SURVEY MAP AND REPORT OR THE COPIES THEREOF ARE NOT VALID WITHOUT THE ORIGINAL SIGNATURE AND SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.

STATE OF

REVISION 11/18/2019- CHANGED BOUNDARY PER CLIENTS REQUEST

SHEET 1 OF 2

PREPARED BY: CHASTAIN-SKILLMAN, INC., 205 EAST ORANGE STREET LAKELAND, FLORIDA 33813 (863) 646-1402 - LB #262		984502-DESC 1
DRAWN BY: H.DAVIDSON	FIELD BOOK: -- PAGE: --	DATE: 06/29/2019
		SHEET NO. V-01

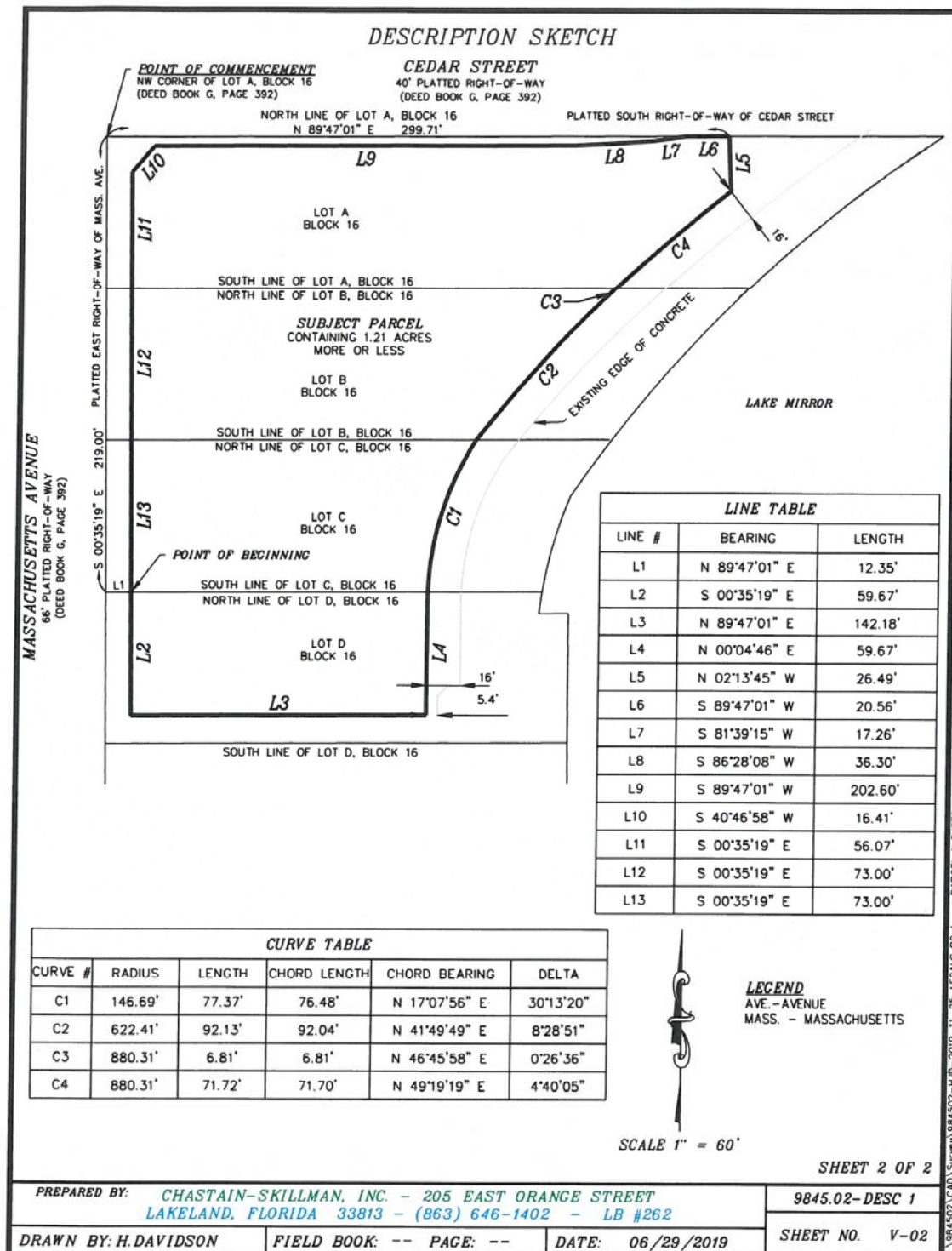


EXHIBIT “B”

Public Parking Spaces
(Following Two Pages)

EXHIBIT ONLY

Exhibit "B"
Parking Garage -
Level 0
Cedar St Entry

Public Parking
Space

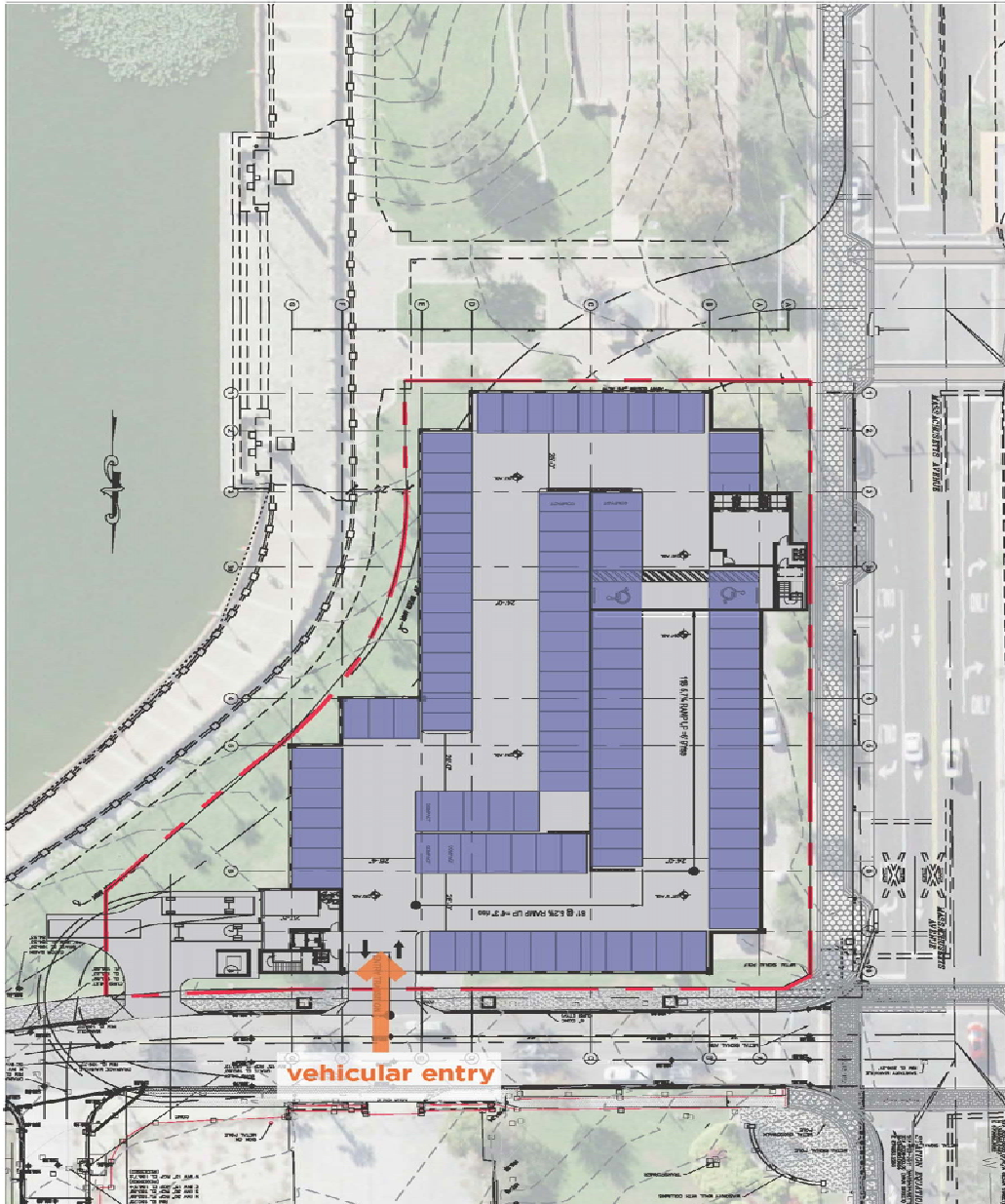


EXHIBIT B | 06.26.19

Note: Print at actual size 11x17 for correct scale
SITE PLAN T = 40"
0 20' 40' >
LIC: AK000059

Exhibit "B"

Parking Garage -

Level 1

Mass. Ave. Entry

Public Parking
Spaces

- Level 0 - 110
- Level 1 - 68
- **TOTAL = 178 Public
Parking Spaces**
- Includes 9 HC Spaces
- Subject to adjustment
with Final Plan.

Public Parking
Space

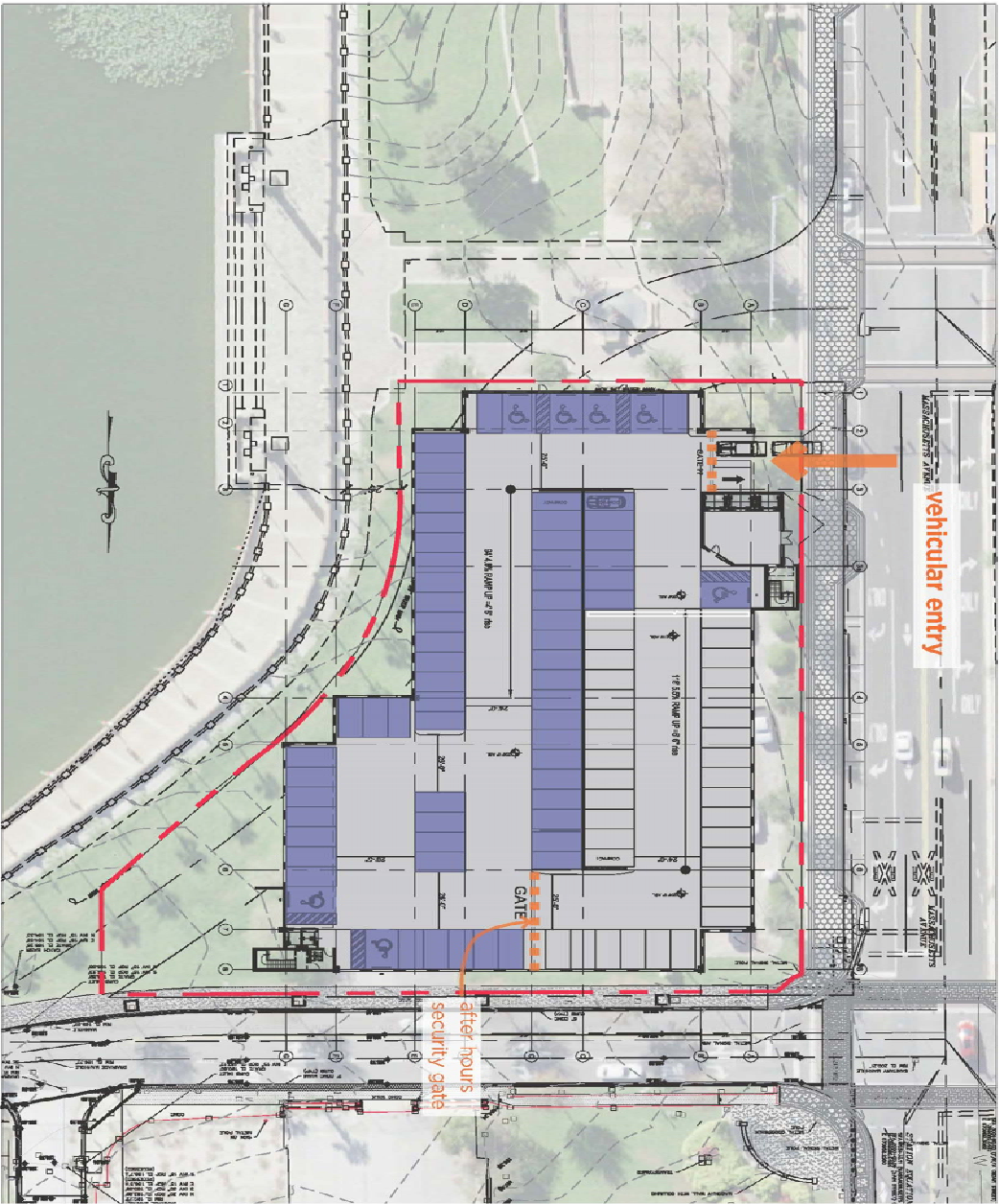


EXHIBIT B | 06.26.19

Note: Print at actual size 11x17 for correct scale
SITE PLAN T" = 40'
0 20' 40' >
LIC. ARCHITECT





THE
LUNZ
GROUP
Architecture | Interior Design

DOWNTOWN LAKELAND OFFICE BUILDING | 12.02.19
PERSPECTIVE RENDERING